

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING MINUTES**

MARCH 4, 2003

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, President
Ron Alvarado, Vice President
Sean Harrigan, Member
Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The Senate budget subcommittee has scheduled a hearing on the State Personnel Board budget for March 25, 2003.
- B. Staff continues to meet with members of the legislature to discuss budgetary issues.
- C. Turnover has increased at the State Personnel Board as a result of the announced budget reductions for 2003-04.

** The State Personnel Board Summary Minutes can be obtained at the following Internet address:
<http://www.spb.ca.gov/spbmeet/spbminrd.cfm>

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Litigation:

California Supreme Court and Appellate Courts

- A. Colmenares v. Braemar Country Club - California Supreme Court has ruled that the 2001 changes to the Fair Employment and Housing Act are to be applied retroactively to cases arising before 2001. The Court found that the amendments only clarified existing law and that the test to be applied to determine whether an individual has a disability is whether the individual is limited in a major life activity, rather than substantially limited. The Court's ruling is consistent with the position taken by the State Personnel Board in its precedential decisions.
- B. Connerly v. State Personnel Board, et al. - Real parties in interest have filed an appeal challenging ruling on attorneys fees.
- C. Betty Jo Smith v. State Personnel Board (SPB)/Department of Developmental Services - In an unpublished decision, Court of Appeal affirmed challenged portion of the trial court ruling that found substantial evidence to support SPB's decision. Trial court had ordered SPB to reconsider penalty. Case involved a physician terminated from her position at Agnews Developmental Center.
- D. California State University v. Berger-Tully - Berger-Tully has filed an appeal of the superior court judgment ruling that the State Personnel Board had no jurisdiction to hear her appeal from untimely rejection during probation.

Trial Courts and Administrative Agencies

- A. State Personnel Board v. Department of Personnel Administration, CDF Firefighters (consolidated cases) Court of Appeal has set an oral argument for April 21, 2003.

- B. International Union Of Operating Engineers (IUOE) (Lunsford) v. State of California - On February 28, 2003, Judge Connelly denied IUOE's petition to enforce a Board of Adjustment (BOA) decision, ruling again that the Unit 8 Memorandum of Understanding of BOA provisions are unconstitutional and that IUOE's attempt to enforce a BOA decision violates the injunction.
- C. IUOE v. State of California (SPB) (Public Employment Relations Board (PERB) case) - Administrative Law Judge D'Orazio held a telephone pre-hearing conference in the PERB action IUOE has filed against SPB. The hearing has been set for March 18-20, 2003.
- D. IUOE v. State of California (SPB) (PERB charge) - IUOE has filed a new charge against SPB alleging that SPB violated the Dills Act by seeking a stay of the PERB action and the Lunsford matter from the Court of Appeal. IUOE seeks its attorneys fees in defending that appeal.

Other

- A. Select Advisory Panel on Policy, Merit Employment and Technical Resources and Appeals - This group met February 25, 2003, to discuss various issues of mutual concern including difficulties experienced in getting the Department of Finance to grant freeze exemptions to allow departments to hire support assistants for reasonable accommodation purposes, minimal publicity periods for examinations, inspection of examination results, consecutive transfers, rescission of job offers due to budget reductions, revised layoff rules and the impact of budget reductions on State Personnel Board (SPB) services. The topic of greatest debate was a concern about SPB's position in applying the consecutive transfer rule to preclude individuals transferred into a class from taking an examination for that class. The group felt that the practice limited upward mobility and wanted SPB to re-examine its policy in this regard. The next meeting is April 29, 2003.
- B. State Personnel Board's State Employee Mediation Program - New brochures came in and are available to departments and unions for purposes of publicizing the program.

4. REPORT ON LEGISLATION

Given by Walter Vaughn, Executive Officer

The Board voted on the following:

- A. SB 69 (Oiler) - Would require individuals, who in good faith believe that public accommodations or housing accommodations do not provide full and equal access, request voluntary changes before filing a lawsuit - NEUTRAL

VOTE: Elkins, Alvarado, Harrigan, Tom - AYE

- B. AB 169 (Horton) - Would provide that a person's failure to exhaust their judicial remedies before the State Personnel Board shall not preclude a separate or subsequent discrimination action between that individual and the appointing authority - NEUTRAL

VOTE: Elkins, Alvarado, Harrigan, Tom - AYE

5. ORAL ARGUMENT

Oral argument in the matter of BARBARA LENOUE, CASE NO. 01-3441. Appeal from dismissal. Department of Developmental Services.

Persons Participating:

Barbara Farley, Labor Relations Specialist, representing Department of Developmental Services
Larry Minsky, Attorney at Law, representing appellant

ACTION: Submitted

6. ORAL ARGUMENT

Oral argument in the matter of YA-PING TSAI, CASE NO. 02-2586. Appeal from dismissal. Department of Developmental Services.

Persons Participating:

Terry Slover, Labor Relations Specialist, representing Department of Department of Developmental Services
Ken Murch, Consultant, California Association of Psychiatric Technicians representing appellant

ACTION: On March 4, 2003, Board adopted the Administrative Law Judge's proposed decision revoking the dismissal and awarding back salary, interest and benefits.

VOTE: Elkins, Alvarado, Harrigan and Tom - Aye.

7. ORAL ARGUMENT

Oral argument in the matter of STEPHEN VAN ZEE, CASE NO. 01-3017. Appeal from withdrawal of employment offer. Office of Inspector General

Persons Participating:

Noreen P. Skelly, Deputy Attorney General, representing
Department of Justice
Stephen Van Zee, Appellant, Pro Per

ACTION: Submitted

8. SELECTION ANALYST CERTIFICATE AWARDS

Awarded to the following recipients:

Allen McCord, Becki Morgan, Bryan R. Baldwin, Cecilia Perrin, Cheryl Session, Debbie Houser, Debbie J. Sutton, Diane Hrepich, Dora Aguilar, Gail Loesch, Gene Castillo, Janet Wardall, Linda Houck, Loray Finley, Lori A. Johnston, Mary Ellen Lucero, Michael Green, Rebecca Mize, Renee Bettencourt, Sharon Howell, Susan Stocks, Wendy Duke, and Xina Bolden.

ACTION: Awards presented.

9. HEARING - LAYOFF RULES

Proposed modification of amendments to regulations relating to layoff: Title 2, California Code of Regulations (2CCR), §§ 470, 470.1, 471, and 472; adoption of 2CCR § 471.1 - Layoff Rules; and amendments to Local Agency Personnel Standards 2CCR §§ 17502 and 17520 - Modified Reduction-in-Force Process.

Persons Participating:

Elizabeth Montoya, Staff, California State Personnel Board

ACTION: Adopted staff's recommendation March 4, 2003.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

BOARD ACTIONS

10. STATE PERSONNEL BOARD SUMMARY MINUTES OF FEBRUARY 19, 2003

ACTION: Adopted March 4, 2003.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

11. ACTION ON SUBMITTED ITEMS

ACTION: See pages 15-17.

12. ADMINISTRATIVE LAW JUDGE CASES

On March 4, 2003, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

CHIEF COUNSEL RESOLUTIONS

EVA JENSEN, CASE NO. 02-0518

Appeal from dismissal

Registered Nurse (Safety)

Atascadero State Hospital

Department of Mental Health

ACTION: Pursuant to Government Code § 18710, the Board issued a resolution remanding this matter to an Administrative Law Judge to conduct an evidentiary hearing and to draft a proposed decision for Board review that addresses all relevant issues.

SHERRI MATHEWS (BEUHLER), CASE NO. 01-2106

Appeal from rejection during probationary period

Secretary

Employment Development Department

ACTION: The Board issued a resolution denying appellant's request for an order to show cause without prejudice to the right of appellant to seek any other remedy that may be available under the law.

PROPOSED DECISIONS

GLENN R. BARR, CASE NO. 01-2684B
Appeal for back pay and repayment of
wrongfully deducted amounts after
reinstatement from dismissal
Correctional Sergeant,
Blythe - State Prison
Department of Corrections
ACTION: Repayments and interest ordered

GINA CHESTER, CASE NO. 02-3725
Appeal from dismissal
Psychiatric Technician Assistant
Porterville - Developmental Center
Department of Developmental Services
ACTION: Dismissal modified to a six months suspension

BILLIE DIEBALL, JR., CASE NO. 02-2840
Appeal from a five-percent reduction
in salary for six months
Correctional Officer
San Luis Obispo - California Men's Facility,
Department of Corrections
ACTION: Five-percent reduction in salary for six months
sustained

JESSE LARA, CASE NO. 01-2748B
Appeal for back pay and repayment of
wrongfully deducted amounts after
reinstatement from dismissal
Correctional Sergeant,
Blythe - State Prison
Department of Corrections
ACTION: Repayments and interest ordered

DENNIS McFARLAND, CASE NO. 02-2350
Appeal from suspension for two workdays
Facility Maintenance Worker
California State University, San Marcos
ACTION: Two workdays suspension revoked

JAMES P. McHENRY, CASE NO. 02-0018
Appeal from formal reprimand
Workers' Compensation Judge
Department of Industrial Relations
ACTION: Formal reprimand revoked

SULEMAN MOOSA, Case No. 02-1616
Appeal from suspension for the
Fall 2002 semester
Professor
California State University, Chico
ACTION: Suspension for the Fall 2002 semester revoked

STEVE VIERO, CASE NO. 01-2978
Appeal from dismissal
Deputy State Fire Marshall III (Supervisor)
Office of the State Fire Marshall
Department of Forestry and Fire Protection
ACTION: Adopted Board decision modifying dismissal to a
six month suspension

KIMBERLY WILLIAMS, CASE NO. 01-2503
Appeal from dismissal
Parole Agent II, Adult Parole
Department of Corrections
ACTION: Adopted Board decision modifying dismissal to a
six month suspension

PETITIONS FOR REHEARING

JULIE COLLIS-DAVID, CASE NO. 02-4150
Appeal from 15 calendar days suspension
Correctional Officer
California State Prison - Represa
Department of Corrections
ACTION: Petition for rehearing filed by appellant denied

ERNESTINE FORREST, CASE NO. 00-0375
Appeal from six work weeks suspension
Corporations Counsel
Department of Corporations
ACTION: Petition for rehearing filed by appellant denied

ERNESTINE FORREST, CASE NO. 00-1274
Appeal from dismissal
Corporations Counsel
Department of Corporations
ACTION: Petition for rehearing filed by appellant denied

GREGORY B. GARRETT, CASE NO. 02-1849
Appeal from three working days suspension
Payroll Operations Supervisor
Office of the State Controller
ACTION: Petition for rehearing filed by appellant denied

DONALD NEAL, CASE NO. 02-3201
Appeal from 60 day suspension
Registered Nurse, CF
California State Prison - Solano
Department of Corrections
ACTION: Petition for rehearing filed by appellant denied

DAVID NEWTON, CASE NO. 99-1618
Appeal from dismissal
Correctional Officer
Susanville - High Desert State Prison
Department of Corrections
ACTION: Petition for rehearing filed by appellant denied

NICK E. NUNEZ, CASE NO. 02-1672
Appeal from five percent reduction
in salary for six pay periods
Youth Correctional Officer
Stockton - Youth Correctional Facility
Department of the Youth Authority
ACTION: Petition for rehearing filed by appellant denied

13. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 18-21.

14. WITHHOLD APPEALS
On March 4, 2003, the Board adopted the following decisions
presented by Laura Aguilera, Assistant Executive Officer,
California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

VALENTINE ALVAREZ JR., CASE NO. 02-2208
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DEMARIO BELK, CASE NO. 02-1726
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOSE CASTANEDA, CASE NO. 02-2061
Classification: Correctional Officer
Department of Corrections
ACTION: WITHDRAWN

GASPER DONAHUE, CASE NO. 02-1216
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

INEZ ELLIOTT, CASE NO. 02-2046
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

RICHARD GETZ, CASE NO. 02-1728
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JAMES GRIFFIN, CASE NO. 02-1910
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

TOMMY HERNANDEZ, CASE NO. 02-2292
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

GLORIA LEMUS, CASE NO. 02-2287
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DANNY KNIGHT, CASE NO. 02-2291
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

SHAWNA NEWELL, CASE NO. 02-1908
Classification: Hospital Police Officer
Department of Mental Health
ACTION: DENIED

15. MEDICAL APPEALS

On March 4, 2003, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

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JOE ASCENCIO, CASE NO. 02-1778
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

JERRY BLISS, CASE NO. 02-1653
Classification: Hospital Police Officer
Department of Mental Health
ACTION: DENIED

EUGENE CABRERA, CASE NO. 02-2007
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

GABRIEL FISCHMAN, CASE NO. 02-2776
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

STEVEN GEREN, CASE NO. 02-3924
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

PAUL GUTIERREZ, CASE NO. 02-2283
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: DENIED

BRYAN HINER, CASE NO. 02-2310
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

PEDRO MANCILLA, CASE NO. 02-3206
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DERRICK QUINN, CASE NO. 02-2593
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

WILLIAM SILER, CASE NO. 02-2592
Classification: Hospital Police Officer
Department of Mental Health
ACTION: DENIED

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WILLIAM SLAGLE, CASE NO. 02-1516
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ALLEN WERESKI, CASE NO. 02-2670
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

16. MERIT ISSUE COMPLAINTS

On March 4, 2003, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

CARRIE BARNECUT, CASE NO. 01-3485
Classification: Program Manager I, OES
Office of Emergency Services
ACTION: DENIED

CAROL FRANCIS, CASE NO. 02-0458
Classification: Psychiatric Technician
Department of Developmental Services
ACTION: WITHDRAWN

MICHAEL GONCALVES, CASE NO. 02-0663
Classification: Staff Services Analyst (General)
Department of Insurance
ACTION: GRANT AND DENIED IN PART

ROBIN MALONEY-RAMES, CASE NO. 01-3934
Classification: Environmental Specialist IV
Department of Fish and Game
ACTION: DENIED

BARBARA MCPHAIL, CASE NO. 01-3910
Classification: Program Manager I, OES
Office of Emergency Services
ACTION: DENIED

WILLIAM SCHMIDT, CASE NO. 01-2667
Classification: Staff Services
Manager II (Sup)
Department of Social Services
ACTION: DENIED

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17. VOIDED APPOINTMENT APPEAL
On March 4, 2003, the Board adopted the following decision presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.
LETICIA SANCHEZ, CASE NO. 02-2478
Classification: Employment Program Representative
Employment Development Department
ACTION: DENIED
18. PETITIONS FOR REHEARING CASE
On March 4, 2003, the Board adopted the following decision presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

EUGENE VASQUEZ, CASE NO. 02-0390P
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
19. PSYCHOLOGICAL SCREENING CASE
On March 4, 2003, the Board adopted the following decision presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

RAMON KENDRICKS, CASE NO. 03-0132
Classification: Cadet, CHP
California Highway Patrol
ACTION: GRANTED
20. NON-HEARING CALENDAR
On March 4, 2003, the Board adopted item B and took item A under submission. These items were presented by Karen Coffee, Chief, Merit Employment and Technical Resources Division, California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

- A. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added.
- B. JOEY DE LA CRUZ
Equity resolution to allow Joey De La Cruz to remain in the classification of Office Technician (Typing).

21. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

- A. ASSOCIATE SAFETY ENGINEER (AMUSEMENT RIDES)
The Department of Industrial Relations is proposing to revise the Minimum Qualifications (MQ's) for the Associate Safety Engineer (Amusement Rides) specification to more closely align the MQ's of this class with the MQ's of the other Associate Safety Engineer parenthetical classes.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. MERIT RULE - Proposed adoption of the new Section 250 to the California Code of Regulations (CCR) entitled Requirement that Selection be Based on Merit and Fitness. (Hearing held July 23, 2002).

NO ACTION

2. TEACHER STATE HOSPITAL(SEVERLY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

3. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES). Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

4. LEONARD GRILL, CASE NO. 02-1166. Appeal from ten percent reduction in salary for nine pay periods. Department of Forestry and Fire Protection. (Oral argument held December 3, 2002).

ACTION: On March 4, 2003, adopted Board decision modifying the ten percent reduction in salary for nine pay periods to an official reprimand and awarding back salary, interest and benefits.*

VOTE: Elkins, Alvarado, Harrigan - Aye. Tom - Not Voting.

*Adopted as Precedential Decision #03-01. [NOTE: Precedential Decisions of the State Personnel Board are published and available by subscription from Continuing Education of the Bar (CEB) in Berkeley. To subscribe, call CEB, toll free, at (800) 924-3924.]

5. RUFUS LINDSEY, CASE NO. 01-3651. Appeal from dismissal. Department of Corrections. (Oral argument held December 4, 2002).

ACTION: On March 4, 2003, adopted Board decision modifying the dismissal to a 90-day suspension and ordered back salary, interest and benefits.

VOTE: Elkins, Alvarado, Tom - Aye. Harrigan - Dissented.

6. VICTORIA MCCOY, CASE NO. 01-3372. Appeal from dismissal. Department of Corrections. (Oral argument held December 4, 2002).

NO ACTION

7. LAYOFF RULES

Proposed amendments and adoption of regulations relating to layoff: Title 2, California Code of Regulations (2CCR), §§ 470, 470.1, 471, 471.1 and 472, Local Agency Personnel Standards §§ 17502 and 17520. (Hearings held January 7, 2003 and March 4, 2003).

ACTION: Adopted staff's recommendation March 4, 2003.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

8. ANSWERS OR APPEALS FILED WITH STATE PERSONNEL BOARD

State Personnel Board (SPB) staff is proposing to adopt new Rule 63 to require, in part, that answers or appeals filed with SPB, requesting that a hearing or investigation be conducted by SPB, notify the responding party of all planned affirmative defenses and requests for relief. (Hearing held February 3, 2003).

NO ACTION

9. TONY PORCELLA, CASE NO. 01-2898. Appeal from dismissal. California Highway Patrol. (Oral argument held February 3, 2003).

NO ACTION

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10. WALTER JOHNSON, CASE NO. 02-0543. Appeal from dismissal. Department of Developmental Services. (Oral argument held February 3, 2003).

ACTION: On March 4, 2003, adopted Board decision modifying dismissal to a 6 month suspension and awarded back salary, interest and benefits.

VOTE: Elkins, Harrigan, Tom - Aye. Alvarado - Dissented.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

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I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on March 4, 2003.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.